IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 912 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIMATLAL MULJIBHAI TALATI

Versus

GUJARAT POLLUTIN CONTROL BOARD

Appearance:

1. Criminal Misc.Application No. 912 of 2000

NANAVATI ASSOCIATES for Petitioner No. 1

MR HARESH J TRIVEDI for Respondent No. 1

MR VIPUL PANCHOLI, APP for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 17/01/2002

ORAL JUDGEMENT

1. Heard ld. Counsel Mr. Kunal Nanavati for Nanavati Associates for the petitioner (original accused

no.4), ld. counsel Mr. Haresh Trivedi for respondent No.1 (original complainant) and ld. APP Mr. Vipul Pancholi for respondent no.2 State. Ld. counsel Mr. Trivedi has tendered affidavit in reply on behalf of respondent No.1 which is taken on record.

2. By means of filing this petition under Section 482 of CrPC, the petitioner- original accused no.4 has prayed that a criminal complaint being registered as Criminal Case No. 712/1989 on 23.2.1989 pending in the court of ld. Judicial Magistrate (F.C.), Gandevi and process issued in the said proceedings be quashed and set aside. According to the petitioner, complaint is filed by the Environmental Engineer under Section 41(2) of Water (Prevention & Control of Pollution) Act, 1974. It has been specifically contended by the petitioner that at the relevant point of time, he was the Professional Director of Gujarat Distilleries (India) Ltd., a company registered under the provisions of the Companies Act (hereinafter referred to as the "Company"). The petitioner is a practising advocate and Chartered Accountant having his office at 3rd Floor, Ambica Chambers, Ashram Road, Ahmedabad. On the date of petition, he was aged about 74 years.

3. Ld. counsel Mr. Nanavati appearing for the petitioner has pointed out that in the complaint (Annex.A), profession of the present petitioner is wrongly shown as "Vepar" (business). Basically, the petitioner is a Chartered Accountant and he was a Professional Director of the Company. He was not concerned with the day to day affairs and administration of the company and, therefore, he could not have been prosecuted by the complainant. Ld. Counsel Mr. Nanavati has placed reliance on the decision of this Court rendered in Criminal Misc. Application No. 1678/90 & Group (Coram: N.J.Pandya,J) dated 11.9.1997. This Court, while dealing with the case of the accused who was a practising advocate and was also shown as Accused No.10 in the very same complaint in which the present petitioner is shown as accused No.4, had initiated aforesaid proceedings under Section 482 of CrPC praying to quash and set aside the criminal complaint and process issued on the basis of the said complaint qua him. After considering all relevant aspects, aforesaid application was allowed. It is pointed out by ld. counsel Mr. Nanavati that criminal case against the petitioner of said application and process issued based on the complaint were quashed and set aside. Copy of the judgment rendered in the aforesaid case is also placed on record.

4. In response to the query raised by this Court, ld. counsel Mr. Trivedi appearing for the respondent No.1 Board has fairly accepted that the present petitioner -original accused no.4 is a practising Advocate and a Chartered Accountant and he was on the Board of Directors as a Professional Director. The grievance of ld. counsel Mr. Trivedi is that the present petitioner should be asked to give details as to names of the persons responsible for day to day business and administration of the company, in view of the ratio propounded by this Court in the case of Dwarka Cement Works Ltd. v/s State of Gujarat, reported in 1992(1) GLH Page 9. Considering the provisions of Article 20(3) of the Constitution of India and the fact that the present Director i.e. petitioner has approached this Court in an individual capacity stating that he has been wrongly prosecuted, it would not be proper or otherwise legal to issue any directions in spirit of the ratio propounded by this Court in the case of Dwarka Cement Works Ltd. (supra).

5. Supporting the arguments advanced by ld. counsel Mr. Trivedi for respondent No.1- original complainant, ld. APP Mr. Vipul Pancholi has drawn attention of this Court to the decision in the case of Azim Hashan Premji & Ors. v/s State of Gujarat & Ors., reported in 2000(3) GLR Page 2280 wherein this Court has held that if such Directors are in charge and responsible for the conduct of the business of the company, a presumption of guilt would arise in that case and complaint in such case, cannot be quashed. The case cited by Mr. Pancholi is not the case where quashing proceedings were initiated by the Professional Director. Further, averments made in the present complaint are also not clear and specific that all the Directors of the Company including the present petitioner were looking after the day to day conduct of business of the company at the relevant point of time. Hence, the above-cited decision would not help the respondents.

6. Ld. counsel Mr. Nanavati, therefore, has rightly submitted that in view of the settled legal position enumerated in the decision of this Court rendered in Cri. Misc. Application No. 1678/90 & Group as well as on the ground of parity, the criminal proceedings against the present petitioner should also be quashed and set aside. I am in agreement with the submission advanced by ld. counsel Mr. Nanavati. It is crystal clear that in the aforesaid case, criminal proceedings were turned down against original accused

no.10 on the sole ground that he was the practising advocate and was a Professional Director. Same is the situation in the case of the present petitioner. Therefore, criminal proceedings against the present petitioner are also require to be quashed and set aside. I agree that the petitioner has approached this Court after a lapse of a reasonably long period and he ought to have approached this Court immediately after 1997 when proceedings against accused no.10 were turned down. However, there are no elements on record by which this Court can infer that the petitioner had accepted to continue with the prosecution. Hence, I am inclined to exercise jurisdiction under Section 482 of the CrPC.

7. For the reasons aforesaid, Cri.Misc. Application is allowed. Complaint dated 23.2.1989 registered as Criminal Case No. 712/1989 pending in the Court of ld. Judicial Magistrate (First Class), Gandevi and process dated 23.2.1989 issued on the strength of said criminal case are hereby quashed and set aside qua the present petitioner -original accused No.4. It is, clarified that prosecution qua other accused shall not be affected.

8. Ld. counsel Mr. Trivedi for respondent NO.1 has rightly submitted that the concerned Magistrate should be directed to expedite the hearing of the criminal case. Request is accepted. Ld. Judicial Magistrate (F.C.) Gandevi before whom Criminal Case No. 712/1989 is pending, is hereby directed to expedite the hearing of aforesaid criminal case and conclude the trial at the earliest.

9. Subject to aforesaid directions and observations, application is allowed. Rule is made absolute accordingly.

17.1.2002 [C.K. BUCH, J]
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